

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	No.
	:	
Petitioner	:	Board Case No.:
	:	20-CA-160279
	:	20-CA-162074
v.	:	20-CA-162418
	:	20-CA-162722
	:	20-CA-162732
SQUIRES LUMBER COMPANY, INC.	:	20-CA-162834
	:	20-CA-166576
Respondent	:	20-CA-165730

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Squires Lumber Company, Inc., its officers, agents, successors, and assigns, enforcing its order dated May 24, 2016, in Case Nos. 20-CA-160279, 20-CA-162074, 20-CA-162418, 20-CA-162722, 20-CA-162732, 20-CA-162834, 20-CA-166576 and 20-CA-165730, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Squires Lumber Company, Inc., its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

SQUIRES LUMBER COMPANY, INC.

ORDER

Squires Lumber Company, Inc., Suisun City, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Threatening employees with job loss for supporting a union by telling Respondent's temporary employees that if it had to, Respondent would fire the directly-hired employees who were supporting Northern California Carpenters Regional Council.
- (b) Threatening to cause the arrest of its employees and non-employees for engaging in a strike and/or picketing at its Suisun City, California facility where Respondent had no legitimate property interest.
- (c) Engaging in surveillance or the impression of surveillance by setting up a video camera near picketing activity.
- (d) Maintaining a rule which restricts "discussing or sharing information regarding Squires Lumber's business with the media (print, radio, or television) except by the President or CEO."
- (e) Maintaining a rule which prohibits unauthorized disclosure of company information and unauthorized use of company property.
- (f) Maintaining a rule prohibiting disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, "or perhaps even fellow employees," and states that any breach will not be tolerated and legal action may be taken by the company.
- (g) Changing its employees working conditions and imposing more onerous and rigorous terms and conditions of employment
 - by prohibiting its employees from removing their hard hats when on break unless sitting at the break table or in their vehicles;
 - by temporarily moving a portable toilet from outdoors to inside the building near its employees' break and work areas;

- by refusing to allow its employees to use the indoor sink to wash their hands before meal and rest breaks;
 - by locking its office door during business hours;
- (h) Issuing written warnings to its employees Francisco Martinez and Bobby Saephan because they and a coworker signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- (i) Ordering its employee Bobby Saephan to take a drug test because of he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- (j) Suspending its employee Bobby Saephan because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- (k) Firing its employee Bobby Saephan because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- (l) Issuing written warnings to its employee Francisco Martinez on October 21 and December 10, 2015 because he and his coworkers signed and presented Respondent with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.
- (m) Failing and refusing to recognize and bargain in good faith with the Northern California Carpenters Regional Council in general and

specifically about changing employees working conditions by prohibiting employees from removing their hard hats when on break unless they were sitting at the break table or in their vehicles.

- (n) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request bargain with the Northern California Carpenters Regional Council in the appropriate unit of all regular full-time millworkers employees directly employed by Respondent at its Suisun City, California facility.
 - (b) Within 14 days from the date of this Order, offer Bobby Saephan full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the Remedy section of this decision.
 - (c) Within 14 days from the date of this Order, remove from its files any reference to the October 14 written verbal warnings of its employees Fernando Martinez and Bobby Saephan, the October 15 order to Saephan to take a drug test, the October 19 suspension of Saephan, the October 20 termination of Saephan, the first written warning to Martinez of October 21, and the final written warning to Martinez of December 10 and within 3 days thereafter, notify them in writing that this has been done.
 - (d) Compensate Bobby Saephan for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
 - (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide a reasonable place designated by the Board or its agents, all payroll records, social security payments records, timecards, personnel records and reports, and all other records including an electronic copy of such

records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (f) Rescind or revise the March 23, 2009 Employee Handbook if it is still in use or the December 2015 Employee Handbook sections as follows:
 - (i) Code of Ethics to delete or revise the restriction on “discussing or sharing information regarding Squires Lumber’s business with media (print, radio, or television) except by the President or CEO;”
 - (ii) Prohibited Conduct to delete or revise the prohibition against unauthorized disclosure of company information and unauthorized use of company property;
 - (iii) Confidentiality to delete or revise prohibitions against disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, “or perhaps even fellow employees,” and the statement that any breach will not be tolerated and legal action may be taken by the company.
- (g) Within 14 days after service by the Region, post at its Suisun City, California facility copies of the attached notice marked “Appendix A.” Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including places where notices are customarily posted. In addition to physical posting or paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked “Appendix A” to all current employees and former employees employed by the Respondent at any time since August 2, 2015.
- (h) Within 14 days of the date of this order, hold a meeting or meetings, scheduled to ensure the widest possible attendance, to fully communicate with employees, at which the attached notice marked “Appendix A” will be publicly read by a responsible corporate executive in the presence of a Board agent or, at the Respondent’s

option, by a Board agent in the presence of a responsible corporate executive.

- (i) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with job loss for supporting a union by telling its temporary employees that if it had to, Respondent would fire the full-time employees who were supporting the Regional Council.

WE WILL NOT threaten to cause the arrest of its employees and non-employees for engaging in a strike and/or picketing at its Suisun City facility where Respondent had no legitimate property interest.

WE WILL NOT video picketing activity near our property.

WE WILL NOT maintain a rule which restricts “discussing or sharing information regarding Squires Lumber’s business with the media (print, radio, or television) except by the President or CEO; a rule which prohibits unauthorized disclosure of company information and unauthorized use of company property; and a rule prohibiting disclosing information about Respondent, its owner/proprietor, its suppliers, its customers, “or perhaps even fellow employees,” and states that any breach will not be tolerated and legal action may be taken by the company.

WE WILL NOT change your working conditions and imposing more onerous and rigorous terms and conditions of employment on you by prohibiting you from removing your hard hats when on break unless sitting at the break table or in your vehicles; by temporarily moving a portable toilet from outdoors to inside the building near your break and work areas; by refusing to allow you to use the indoor sink to wash your hands before meal and rest breaks; and by locking our office door during business hours

.WE WILL NOT issue written warnings to you, order you to take a drug test, suspend or terminate you because employees signed and presented us with a petition authorizing the Northern California Carpenters Regional Council to be their exclusive representative for purposes of collective bargaining, joined or assisted the Carpenters Union, and engaged in other concerted activities and to discourage employees from engaging in these activities.

WE WILL NOT, due to these serious and substantial unfair labor practice conduct as set forth above, refuse to recognize the Regional Council to serve as the exclusive representative for purposes of collective-bargaining for all regular full-time millworker employees employed by us at our Suisun City, California facility.

WE WILL NOT alter your terms and conditions of employment without first affording the Regional Council notice and opportunity to bargain.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the Act.

WE WILL recognize the Northern California Carpenters' Regional Council as the exclusive bargaining representative of our regular full-time direct-hire millworker employees and, on request, **WE WILL** bargain in good faith with them regarding our employees' wages, hours, and other terms and conditions of employment and if agreement is reached, embody the understanding in a signed agreement..

WE WILL within 14 days from the date of the Board's Order, offer Bobby Saephan full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL compensate Bobby Saephan for any loss of earnings and other benefits suffered as a result of the discrimination against him, less any net interim earnings plus interest.

WE WILL compensate Bobby Saephan for any adverse income tax consequences of receiving a lump-sum backpay award and **WE WILL** file with the Regional Director for Region 20, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the October 14 written verbal warnings of employees Fernando Martinez and Bobby Saephan, the, October 15 order to Saephan to take a drug test, the October 19 suspension of Saephan, and October 20 termination of Saephan, the first written warning to Martinez of October 21, and the final written warning to Martinez of December 10, and **WE WILL** within 3 days thereafter,

notify them in writing that this has been done and this discipline and discharge will not be against them in any way.

WE WILL to the extent we have not already done so, and within 14 days from the date of the Board's Order, rescind or revise the March 23, 2009 Handbook Confidentiality provision, the Code of Ethics confidentiality provision, and our Prohibited Conduct sections on unauthorized disclosure of company information and unauthorized use of company property.

WE WILL furnish all current employees with written notice that the unlawful provisions have been rescinded or we will furnish them with revised provisions that provided lawfully worded rules.

SQUIRES LUMBER COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

901 Market Street, Suite 400
San Francisco, California 94103-1735
Hours: 8:30 a.m. to 5 p.m.
415-356-5130



APPENDIX B

This Appendix contains the full content of each rule that is alleged to violate the Act.

What Squires Lumber Company, Inc. Expects From You

March 23, 2009 version

[December 2015 Handbook differs in that bracketed items have been deleted]

Your first responsibility is to know your own duties and how to do them promptly, correctly, and pleasantly. Secondly, you are expected to cooperate with management and your fellow employees [and maintain a good team attitude]. How you interact with fellow employees and those whom Squires Lumber Company, Inc. serves, and how you accept direction can affect the success of your department. In turn, the performance of one department can impact the entire service offered by Squires Lumber Company, Inc. Consequently, whatever your position, you have an important assignment: perform every task to the very best of your ability. The result will be better performance for the company overall, and personal satisfaction for you. You are encouraged to grasp opportunities for personal development that are offered to you.

We strongly believe that you should have the right to make your own choices in matters that concern and control your life. We believe in direct access to management. We are dedicated to making Squires Lumber Company, Inc. a company where you can approach your manager, or any member of management, to discuss any problem or question. We expect you to voice your opinions and contribute your suggestions to improve the quality of Squires Lumber Company, Inc. We're all human, so please communicate with each other and with management.

Remember, you help create the healthy, pleasant and safe work conditions Squires Lumber Company, Inc., intends for you. Your dignity and that of fellow employees, as well as that of our customers, is important. We tell the truth to each other, our customers, and our suppliers. We tell the cold, hard, unvarnished, uncomfortable kind of truth, and the whole story, not just part of it. We don't stretch it, bend it, or avoid it. If someone raises heck about the truth, let them. Just say

it like it is. Squires Lumber Company, Inc. needs your help in making each working day [enjoyable and] rewarding.

Code of Ethics

Squires Lumber Company has a solid reputation for honesty, social responsibility, and ethical dealings. Every employee, including every officer and director, shares an obligation to protect and strengthen that good reputation. The Code of Ethics provides practical guidelines regarding business conduct and personal attitude expected from every employee and pertains to all relationships with customers, employees, suppliers, competitors, and governmental agencies. As an employee, your adherence to the regulations is expected.

Financial integrity: Any action that negatively affects the accuracy, integrity, or propriety of Squires Lumber's books and records is a violation of company policy. Violations in these areas, or a failure to report any known violation in areas, is considered grounds for disciplinary actions up to and including termination. If you become aware of these activities or have observed them in the past, you are required to report them to the Company owner.

Compliance with Laws and Regulations: Every employee shall comply with all applicable laws and regulations. The Company will fully cooperate with all law enforcement authorities in investigating and prosecuting illegal activities.

Conflicts of Interest: Squires Lumber expects all employees to be honest and act in good faith. Avoiding conflicts of interest is an obligation of all employees in order to protect and strengthen Squires Lumber's reputation for honesty and ethical business practices in all relationships with customers, suppliers, and other employees. Although not inclusive, the following are examples of activities that may be conflicts of interest:

- Being actively engaged in personal financial or business relationships with suppliers, customers, or employees
- Actively soliciting personal loans between employees, customer, suppliers, etc.

- Accepting or giving unauthorized discounts on merchandise

Confidential Information: It should be understood that, in order to learn and do your job, you will have access to and the need to use confidential information and trade secrets developed by Squires Lumber, including but not limited to customer lists, pricing

information, profit margins, supply sources, operating methods and procedures, or credit methods and procedures. To protect trade secrets and confidential information, all employees are not to provide or release such information to competitors, customers, other employees. In addition, discussing or sharing information regarding Squires Lumber's business with the media (print, radio, or television) is restricted except by the President and CEO.

Personal Investments: Squires Lumber's reputation rests in part on intelligent management of its business and expects all employees to manage their own finances in an intelligent and prudent way.

Government Officials and Agencies: Any Squires Lumber's transaction with the government will be for a legitimate business purpose, following applicable laws and customs, and in compliance with Squires Lumber's policies and procedures.

Employee Relations: Squires Lumber's has a moral and legal obligation to follow non-discrimination policies regarding sex, race, color, religion, national origin, age, or disability or any other basis protected by applicable laws.

Personal Conduct: Gambling in any form on company property is forbidden.

The performance of your assigned duties will involve business relationships with individuals both inside and outside of Squires Lumber and with other companies or organizations. You should always act in accordance with the law, with full consideration of Squires Lumber's rights, too protect your own good reputation and that of Squires Lumber, and to avoid any transactions or situations in which your interests conflict or could be viewed as conflicting with those of Squires Lumber's.

As relevant here, the December 2015 handbook omits certain portions of the March 23, 2009 Code of Ethics. Under the subtopic ***Financial Integrity***, “financial information” is deleted. In ***Conflicts of Interest***, the phrase “the best interests of the Company” has been deleted. Moreover, the entire ***Confidential Information*** subtopic was deleted from the Code of Ethics.

Prohibited Conduct

The following conduct is prohibited and will not be tolerated by Squires Lumber. This list of prohibited conduct is illustrative only; other types of conduct that threaten security, personal safety, employee welfare and Company operations also may be prohibited.

This list is an example of actions which will normally subject an employee to *immediate termination* on the first occurrence. Again, this list is not intended to identify all possible violations.

- Dishonesty of any type.
- Unauthorized disclosure of Company information.
- Possession of explosives, firearms, knives, or other dangerous weapons on Company property including vehicles, trucks, forklifts, etc.
- Verbal or physical abuse or other abusive behavior toward employees, customers, or other persons on Company property.
- Use, sale, distribution or possession of illegal drugs while on Company business or premises during work hours, including lunch or breaks.
- Possession or use of alcoholic beverages while on Company business or premises during work hours, including lunch or breaks.
- Theft, deliberate or careless destruction or damage of Company property or the property of employees, visitors or any other person on Company premises, parking lots or grounds or in Company vehicles.
- Unauthorized use of Company property
- Unauthorized possession of Company property
- Falsification of Company records
- Insubordination, including but not limited to failure or refusal to obey the orders or instructions of a supervisor or member of management, or the use of abusive or threatening language toward a supervisor or member of management;
- Violations of Company Code of Ethics which requires compliance with all local, state, and federal laws
- "No Call, No Show" for one scheduled shifts
- Working "off the clock" or directing another employee to work "off the clock"
- Refusal to take a drug or alcohol test or other violations of Company drug or alcohol policies
- Refusal to cooperate fully in investigation of loss, injury, or policy violation
- Removing or attempting to remove from Company property, without proper authorization, any Company property or record, or property or record of any customer, visitor, employee or any other person at the Company's facility.

- Misrepresentation on an application for employment, physical examination (CDL truck drivers only) or other Company report including but not limited to omission of prior employers or past medical history or the falsification of any documents submitted to the Company during the employment process regardless of when the misrepresentation of falsification actually occurred.
- Violation of Company's equal opportunity policy or No Harassment policy. Committing of or involvement in any act of unlawful harassment of another individual.
- Recording the work time of another employee or allowing any other employee to record your work time, or falsifying any time card, either your own or another employee's;
- Provoking a fight or fighting during working hours or on Company property;
- Participating in horseplay or practical jokes on Company time or on Company premises;
- Engaging in criminal conduct whether or not related to job performance;
- Causing, creating, or participating in a disruption of any kind during working hours on Company property;
- Using abusive language at any time on Company premises;
- Failing to notify a supervisor when unable to report to work;
- Failing to obtain permission to leave work for any reason during normal working hours;
- Failing to observe working schedules, including rest and lunch periods;
- Failing to provide a physician's certificate when requested or required to do so;
- Sleeping or malingering on the job;
- Making or accepting personal telephone calls, including cell phone calls, of more than three minutes in duration during working hours, except in cases of emergency;
- Working overtime without authorization or refusing to work assigned overtime;
- Violating any safety, health, security or Company policy, rule, or procedure;
- Committing a fraudulent act or a breach of trust under any circumstances; and
- Committing of or involvement in any act of unlawful harassment of another individual

The December 2015 handbook deletes that fourth item, “Verbal or physical abuse or other abusive behavior toward employees, customers, or other persons on Company property.” It also deletes the ninth item, “Unauthorized use of Company property.” The twelfth item, Insubordination, has been revised. The prohibited conduct of “Causing, creating, or participating in a disruption of any kind during working hours on Company property” has been deleted. “Working Overtime without authorization or refusing to work assigned overtime” has also been deleted. The 2009 Handbook Confidentiality provision is as follows:

Confidentiality

Each employee is responsible for safeguarding the confidential information obtained during employment.

In the course of your work, you may have access to confidential information regarding Squires Lumber Company, Inc., its owner/proprietor, its suppliers, its customers, or perhaps even fellow employees. You have a responsibility to prevent revealing or divulging any such information unless it is necessary for you to do so in the performance of your duties. Access to confidential information should be on a "need-to-know" basis and must be authorized by your supervisor. Any breach of this policy will not be tolerated and legal action may be taken by the Company.

The December 2015 expands this provision as follows:

Confidentiality

Each employee is responsible for safeguarding confidential information obtained during employment. It should be understood that, in order to learn and do your job and in the course of your work, you may have access to confidential information and trade secrets developed by Squires Lumber Company, Inc., its owner/proprietor, its suppliers, its customers, or perhaps even private information of fellow employees. You will also have access to including, but not limited to customer lists, pricing information, profit margins, supply sources, operating methods and procedures, or credit methods and procedures. To protect trade secrets and confidential information, all employees are not to provide or release such information to competitors, customers, other employees. In addition, discussing or sharing

information regarding Squires Lumber Company, Inc.'s business with the media (print, radio, or television) is prohibited, except by the President and CEO.

You have a responsibility to prevent revealing or divulging any such information unless it is necessary for you to do so in the performance of your duties. Access to confidential information should be on a "need-to-know" basis and must be authorized by your supervisor. Any breach of this policy will not be tolerated and legal action may be taken by the Company.

Note: information that is publicly available, or which can be located or viewed publicly, is not confidential. Employees are also free to discuss their own wages, hours and working conditions to third parties unrelated to the company if they wish. And among the Company's employees, information regarding wages, hours and working conditions is not considered confidential. All employees of Squires Lumber Company, Inc. are required to sign a separate "Confidentiality Agreement" upon hire.